THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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WRIT PETITION No.13093 OF 2005

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Dt: 27.09.2005

Between:

The Deputy Director, Staff Selection Commission

(Southern Region) EVK Sampath Buildings

2nd floor, College Road, Chennai 600 006. … PETITIONERS

and another

AND

Shri Birendra Sah, S/o.J.Sah

SMQ 294/8, NP, AF Station, Hakimpet,

Secunderabad … RESPONDENT

THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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WRIT PETITION No.13093 OF 2005

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ORDER: (per the Hon'ble Smt.Justice T.Meena Kumari)

This Writ Petition is filed by the petitioners to quash the Order dated 22.03.2005 in

O.A.No.1233 of 2004 on the file of the Central Administrative Tribunal, Hyderabad.

The petitioners herein are the respondents and the respondent herein is the applicant in the above said O.A.

The above O.A. was filed by the respondent-applicant challenging the action of the petitioners in issuing proceedings dated 14.10.2004 cancelling his candidature on the ground that the age relaxation benefit given to all the Central Government Employees is not applicable in the case of Armed Forces Personnel.

It is the case of the respondent-applicant before the Tribunal that he is working as Sergeant in the Air Force Station, Hakimpet, Secunderabad and upon Notification published by the Staff Selection Commission for recruitment to the posts of Junior Hindi Translators in the Office of the Controller General of Defence Accounts, he applied and appeared for the written examination and was qualified. Thereafter, he was called for the interview/personality test vide letter dated 01.06.2004 wherein, it was stated that he had been called for the interview/personality test basing on the information furnished by him in the application. It is also stated in the said letter that the departmental endorsement/service particulars duly certified by his Office, in case of age relaxation is sought/claimed, be produced. Subsequently, by letter dated 05.08.2004, he was informed of his having qualified the examination under relaxed age limit as a departmental candidate and was directed to produce 'no objection certificate' from the Air Headquarters by 20th August, 2004 for further processing his candidature for nomination and that he submitted the same. He then received communication dated 14.10.2004 stating that his candidature was cancelled for the reason that age concession available for Civil Government Servants is not applicable in the case of Armed Forces Personnel.

The petitioners have filed their reply statement before the Tribunal stating that till the select list is prepared, the papers would be provisionally examined and a detailed scrutiny in respect of age and educational qualifications etc., of the candidate is normally done only when the select list of the candidates is prepared and at that stage, it was noticed that the respondent-applicant claimed age relaxation as a departmental candidate of the Central Government under para 4(C) (ix) of the notification. They contended that being a combatant of the Indian Air Force, the respondent-applicant is not eligible for age concession and in fact, the Department of Personnel & Training, Government of India in its letter dated 16.09.2004 observed

that the age relaxation which is admissible for Civil Government Servants will not apply in case of the Armed Forces Personnel. The view of the Government is that the Armed Forces Personnel are not holders of the civil posts and as such, they are not eligible to be considered when a civil post is filled and age relaxation admissible for Civil Government Servants will not apply in the case of Armed Forces Personnel.

The Tribunal after hearing the counsel appearing for both the sides and after going into the merits of the case, disposed of the O.A. by setting aside the Order dated 14.10.2004 holding that in the absence of any specific bar created to avail the age relaxation in respect of the departmental candidates as contained in paragraph 4(C) (ix) of the notification, the stand taken by the petitioners, in the circumstances, cannot be accepted so as to reject the candidature of the respondent-applicant.

Heard the learned counsel.

It is the contention of the learned counsel for the respondent-applicant that the respondent-applicant being a departmental candidate is entitled to the benefit of age relaxation in terms of paragraph 4(C) (ix) of the notification.

Learned Assistant Solicitor General appearing for the petitioners has brought to the notice of this Court a letter dated 31.03.2005 issued by the Under Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions to the Secretary, Staff Selection Commission, CGO Complex, New Delhi.

The said letter was issued after disposal of the present O.A., referring to O.A. No.1233 of 2004 filed before the Central Administrative Tribunal, Hyderabad by Birendra Sah who is the respondent-applicant. The relevant portion reads as follows:

> "…….. the age relaxation benefit is admissible to civilian Government servants and as the petitioner belongs to combatised rank in the Armed Forces, this benefit will not be applicable to petitioner"

2. Endorsing the above line of argument, Estt (D) Section of this Department has advised that the following points may also be incorporated:-

> "Even for the Civilian Government employees, age relaxation is not automatically available but the same is subject to fulfillment of certain conditions, which are (i) that the post held should be in the same line or allied cadre of the recruitment post and (ii) a relationship has to be established that service rendered in the

existing post will be useful for efficient discharge of the duties in the new post. In the instant case, apart from the fact that the petitioner on account of not being a civilian employee, is not entitled to the benefit of the age-relaxation, the nexus principle required to be satisfied, cannot be satisfied in the instant case between the post of Sergeant in the Armed Forces and that of Junior Hindi Translator in the Office of CGDA".

Learned Assistant Solicitor General has contended that in view of the said clarification, respondent-applicant cannot be treated as a departmental candidate since he is working in the Air Force and he, not being a civilian employee, is not entitled to the benefit of age relaxation.

We have gone through the Notification issued by the Staff Selection Commission. Para 2(b) of the said Notification, which deals with departmental candidates, reads as under:

"FOR DEPARTMENTAL CANDIDATES:

Central government employees holding post in the pay scale of Rs.3050-4590 or Rs.4000-6000 with three years of regular service in these grades as on 01.01.2004 and who fulfill the educational qualifications as stipulated in Para 5 below".

So, a reading of clause 2(b) goes to show that the Central government employees holding the post in the pay scale of Rs.3050-4590 and Rs.4000-6000 with three years regular service as on 01.01.2004 and who fulfill the educational qualifications as stipulated in the Notification, are entitled for applying the post of Junior Hindi Translator.

Para 4(C) (ix) of the Notification, which is relevant for the present purpose reads as under:

"The Upper age limit is relaxable upto the age of 40 years (45 years for SC/ST candidates and 43 years for OBC candidates) as on 01.01.2004 to the Departmental candidates who have rendered not less than 3 years of continuous service on regular basis (and not on ad-hoc basis) as on 01.01.2004."

It is contended by the learned counsel appearing on behalf of the respondent-applicant that the applicant has fulfilled the requisite educational qualifications, passed the written test, and also undergone the other process of selection and at that stage, the petitioners cannot cancel the candidature of the respondent-applicant.

In the absence of any other condition in the Notification that the age relaxation benefit will not apply to the Armed Forces Personnel, the clarification issued by the Under Secretary to the Government of India dated 31.03.2005 after disposing of the present O.A., cannot have any legal force as the same was issued overriding the conditions imposed in the said Notification.

Under the above circumstances, we do not find any illegality or irregularity in the order impugned. Therefore, the Writ Petition is dismissed. However, the petitioner-Department shall consider the case of the respondent as per his merit in the selection list, within a period of three months from the date of receipt of a copy of the order.

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(T.MEENA KUMARI, J)

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(P.LAKSHMANA REDDY, J)

Dt: 27.09.2005

bsv/lvl